

RECEIVED

2008 MAR 14 PM

Original Title Page

HAMBURG SUD/MAERSK LINE VESSEL SHARING AGREEMENT

FMC AGREEMENT NO. 012034



TABLE OF CONTENTS

<u>Article</u>	<u>Name</u>	<u>Page</u>
1	Name of the Agreement	1
2	Purpose of the Agreement	1
3	Parties to the Agreement	1
4	Geographic Scope	1
5	Agreement Authority	2
6	Administration and Delegations of Authority	6
7	Membership	6
8	Voting	6
9	Duration and Termination	6
10	Assignment	8
11	Law and Arbitration	8

RECEIVED  
2009 APR 15 PM 4:11  
OFFICE OF THE  
FEDERAL MARITIME COMMISSION

Hamburg Sud/Maersk Line  
Vessel Sharing Agreement  
FMC Agreement No. 012034-001  
First Revised Page No. 1

**ARTICLE 1: NAME OF THE AGREEMENT**

The name of this Agreement is the Hamburg Sud/ Maersk Line Vessel Sharing Agreement (the "Agreement").

**ARTICLE 2: PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to permit the Parties to achieve efficiencies and economies in the trades covered by the Agreement through their joint cooperation and coordination of their vessels and related services in such trades.

**ARTICLE 3: PARTIES TO THE AGREEMENT**

The parties to the Agreement (hereinafter referred to individually as "Party" and jointly as "Parties") are:

Hamburg Sudamerikanische Dampfschiffahrts Gesellschaft KG  
("HSDG").

Address: Willy-Brandt Strasse, 59  
20457 Hamburg, Germany

A.P. Moller-Maersk A/S trading under the name of Maersk Line  
("ML").

Address: 50, Esplanaden  
DK-1098, Copenhagen K. Denmark

**ARTICLE 4: GEOGRAPHIC SCOPE**

This Agreement covers the trades between ports on the U.S. Atlantic Coast, on the one hand, and ports in Panama, Colombia, Australia, and New Zealand on the other hand. All of the foregoing is hereinafter referred to as the "Trade."

**EFFECTIVE**  
**MAY 30 2009**

**ARTICLE 5: AGREEMENT AUTHORITY**

5.1 Vessels. The Parties are authorized to discuss and agree upon the number, size and characteristics of vessels to be deployed hereunder and, without further amendment, to operate a service of up to eleven (11) vessels with a nominal capacity of up to 3,500 TEUs each. Pursuant to and without limitation of the foregoing, the Parties hereby agree as follows:

(a) Initially, the Parties shall operate nine (9) vessels with a capacity of approximately 2,800 TEUs each in a service with a round voyage of 63 days. HSDG shall provide four (4) vessels and ML shall provide five (5) vessels. Vessels will be required to perform a service speed of 21.5 knots and will be capable of supplying 560 reefer plugs.

(b) [INTENTIONALLY LEFT BLANK]

(c) Each of the Parties will be responsible for the costs of operating the vessels it provides under this Agreement.

**EFFECTIVE**

**MAY 30 2009**

(d) A Party shall have the right to replace and/or substitute vessels throughout the life of the Agreement, provided that the substitute vessel meets the minimum specifications set out in Article 5.1 and all additional vessel and cargo expenses associated with such substitution are for the account of the Party substituting the vessel.

5.2 Service and Schedule.

The Parties agree to maintain a reliable fixed day weekly frequency of service in accordance with a schedule to be agreed. The Parties are authorized to discuss and agree upon criteria to measure adherence to the agreed-upon schedule and remedial actions/consequences, including responsibility for costs, in the event of non-adherence.

5.3 Space Allocation.

(a) Space on the vessels operated hereunder shall be allocated as follows:

	<u>Northbound (16 tons/TEU)</u>	<u>Southbound (13.8 tons/TEU)</u>
ML	959 TEUs (312 plugs)	1,111 TEUs (312 plugs)
HSDG	767 TEUs (248 plugs)	889 TEUs (248 plugs)

The Party operating the vessel shall be entitled to utilize slots in excess of the vessel's declared capacity and unused slots in the other Party's allocation.

**EFFECTIVE**  
**MAY 30 2009**

(b) Notwithstanding anything to the contrary in this Agreement, ML shall be permitted to continue chartering space on the service operated hereunder to Hapag-Lloyd pursuant to FMC Agreement No. 011928. Capacity not used by Hapag-Lloyd will be released to ML. In the event Hapag-Lloyd exceeds its allocation, additional slots will be purchased first from ML and then from the Party operating the vessel. To facilitate efficient operations, HSDG and Hapag-Lloyd may communicate directly with respect to day-to-day operational matters (e.g., scheduling, hazardous or out-of-gauge cargoes). In the event FMC Agreement No. 011928 is terminated, space made available as a result of such termination shall revert to ML.

(c) The Parties are authorized to buy and sell space from within their respective allocation from/to one another on an *ad hoc* basis in such amounts and on such terms and conditions as they may agree from time to time.

**EFFECTIVE**

**MAY 30 2009**

5.4 Other Services.

Neither Party may offer a fixed competing service in the portion of the Trade between the U.S. East Coast and Australia/New Zealand, either directly or via transshipment.

5.5 Terminals.

The Parties are authorized to discuss and agree upon the terminals to be called by vessels operated hereunder, and to contract jointly or separately for terminal and stevedoring services. Nothing in this Agreement shall authorize the Parties to jointly operate a marine terminal in the United States.

5.6 Operational and Administrative Matters

The Parties are authorized to discuss and agree on routine matters such as cargo claims and other liabilities, indemnifications, general average, force majeure, a cross charter party, joint working procedures, standards for containers and for the acceptance of breakbulk, oversized and dangerous cargo, and other operational/administrative issues to implement the terms hereof.

5.7 Further Agreements

Pursuant to 46 C.F.R. §535.408(b), any further agreement between the Parties, other than those concerning routine operational and administrative

**EFFECTIVE**

**MAY 30 2009**

matters, will not be implemented unless such agreement has been filed and become effective under the Shipping Act of 1984, as amended.

**ARTICLE 6: ADMINISTRATION AND DELEGATIONS OF AUTHORITY**

6.1 This Agreement shall be administered and implemented by meetings, decisions, memoranda and communications between the Parties.

6.2 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate same:

- (a) Any authorized officer of each of the Parties; and
- (b) Legal counsel for each of the Parties.

**ARTICLE 7: MEMBERSHIP**

Initially, membership in this Agreement shall be limited to the Parties. Additional parties may be added by unanimous agreement of the Parties.

**ARTICLE 8: VOTING**

Except as may be otherwise provided herein, all decisions hereunder shall require unanimous agreement of the Parties.

**ARTICLE 9: DURATION AND TERMINATION**

9.1 This Agreement will become effective on the date it becomes effective pursuant to the U.S. Shipping Act of 1984, as amended, and shall continue indefinitely, subject to termination as provided herein.



9.2 This Agreement will have a minimum term of two (2) years commencing on April 28, 2008. Any Party may resign from the Agreement on not less than six (6) months written notice, such notice not to be served until at least October 28, 2009.

9.3 Notwithstanding Article 9.2, if at any time during the term of the Agreement any Party should become bankrupt or declare insolvency or have a receiving order made against it or suspend payments, or continue its business under a receiver or administrator for the benefit of any of its creditors, the other Party will have the option to withdraw from the Agreement with immediate effect.

9.4 Notwithstanding Article 9.2, if at any time during the term of this Agreement there shall be a change in the ownership or ultimate control of a Party, or an agreement has been entered into for such a change of ownership or ultimate control, and the other Party is of the opinion arrived at in good faith that such change (whether or not it has been effected) is likely to materially prejudice the working of this Agreement, then the other Party may, within six months of becoming aware of the change in ownership or control or the existence of the agreement to effect such change, withdraw from the Agreement by giving not less than three months' notice in writing. For purposes of this Article 9.4, a change in the control or material change in the ownership of a Party or of the holding company of that Party shall not include:

**EFFECTIVE**  
**MAY 30 2009**

- (i) Any public offering of shares in that Party or its holding company; or
- (ii) Any purchase or sale of shares in that Party or its holding company of less than 30% of the issued share capital of that company or its holding company.

**ARTICLE 10: ASSIGNMENT**

The rights and obligations of any Party under this Agreement shall not be assignable except with the prior consent of the other Party.

**ARTICLE 11: LAW AND ARBITRATION**

11.1 The Parties agree to try and resolve all disputes through discussion. If the dispute cannot be resolved by discussion, any Party may give the other Party fifteen (15) days' notice of its intention to refer the dispute to arbitration. If the dispute is not resolved within that 15 day period, then either:

(a) If the dispute does not concern outwards liner cargo shipping from Australia, it shall be settled in accordance with 11.2 below; or

(b) If any question or dispute arises with respect to outwards liner cargo shipping from Australia, the Parties to this Agreement shall inform the Minister responsible for the administration of Part X of the Trade Practices Act 1974 of the nature of the question or dispute and request permission for the question or dispute to be settled in accordance with Article 11.2 below. If such permission is not given then Australian law will apply to this Agreement and arbitration shall be before a single arbitrator to be appointed by agreement or in default of agreement, by the Australian Commercial Disputes Centre and the arbitration shall take place in Sydney in accordance with and subject to the

Commercial Arbitration Act 1984 (NSW) and UNCITRAL arbitration rules. Where the amount in dispute is USD100,000 or less, the arbitration will proceed on the basis of documents and written submissions only. Any right of appeal or other recourse under Part V of the Commercial Arbitration Act of 1984 shall be excluded to the extent permitted under the Act.

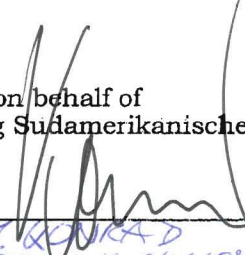
11.2 To the extent that Article 11.1(b) does not apply, this Agreement shall be governed by and construed in accordance with the laws of England. All disputes and differences arising under this Agreement which cannot be amicably resolved shall be referred to arbitration in the London in accordance with the Arbitration Act 1996 and the rules of London Maritime Arbitrators Association ("LMAA"). The Parties agree to appoint a single arbitrator, having appropriate commercial and consortia experience, within 21 days of any Party seeking an appointment. Should there be no agreement on the appointment within said 21 days, then the LMAA will appoint a single arbitrator at the request of any Party. Where the amount in dispute is USD100,000 or less, the arbitration will proceed on the basis of documents and written submissions only.

Hamburg Sud/Maersk Line  
Vessel Sharing Agreement  
FMC Agreement No. 012034-001

SIGNATURE PAGE

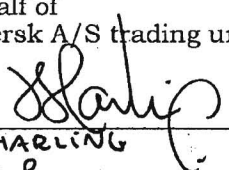
IN WITNESS WHEREOF, the parties have caused this Agreement to be  
executed by their duly authorized representatives as of this 15<sup>TH</sup> day of April,  
2009.

For and on behalf of  
Hamburg Sudamerikanische Dampfschiffahrts Gesellschaft KG

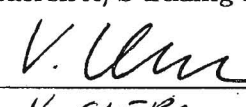
  
Name T. SAIET  
Title DEPUTY CHAIRMAN OF THE EXECUTIVE BOARD  
Date 15.4.2009

F. SAIET  
DIRECTOR  
LINE MANAGEMENT

For and on behalf of  
A.P. Moller-Maersk A/S trading under the name of Maersk Line

  
Name J. HARLING  
Title V.P.  
Date 15.4.2009

For and on behalf of  
A.P. Moller-Maersk A/S trading under the name of Maersk Line

  
Name V. CLERC  
Title V.P.  
Date 15.4.2009